

EX PARTE OR LATE FILED

RECEIVED

MAR 24 1995

FLEISCHMAN AND WALSH, L. L. P.

ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

AARON I. FLEISCHMAN

FLEISCHMAN AND WALSH, P. C.

CHARLES S. WALSH

ARTHUR H. HARDING

STUART F. FELDSTEIN

RICHARD RUBIN

JEFFRY L. HARDIN

STEPHEN A. BOUCHARD

R. BRUCE BECKNER

HOWARD S. SHAPIRO

CHRISTOPHER G. WOOD

SETH A. DAVIDSON

WILLIAM F. ADLER

MATTHEW D. EMMER

DAVID D. BURNS

JILL KLEPPE McCLELLAND

STEVEN N. TEPLITZ

PETER T. NOONE*

ERIN R. BERMINGHAM

REGINA R. FAMIGLIETTI

MARK G. JOHNSTON*

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

1400 SIXTEENTH STREET, N. W.
WASHINGTON, D. C. 20036

(202) 939-7900
FACSIMILE (202) 745-0916
INTERNET fw_law@clark.net

DOCKET FILE COPY ORIGINAL

March 24, 1995

* NEW YORK AND NEW JERSEY BARS ONLY
* NEW YORK BAR ONLY

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: ET Docket No. 93-7
Public Notice No. 43173

Dear Mr. Caton:

In accordance with Section 1.1200 et seq. of the Commission's rules, this is to advise of presentations by Carol Melton, Vice President, Law and Public Policy, Time Warner Inc.; Kevin Leddy, Senior Vice President Marketing, Time Warner Cable; Jay Vaughan, Director Engineering, Time Warner Cable; and the undersigned to Commission staff members listed below relating to matters being considered in the above-referenced proceedings.

Presentations on March 22, 1995:

1. Bruce Franca, Deputy Chief, Office of Engineering & Technology.
Alan Stilwell, Economic Advisor, Office of Engineering & Technology.
2. Ron Parver, Division Chief, Technical Services, Cable Services Bureau.
John Wong, Deputy Chief, Technical Services, Cable Services Bureau.

No. of Copies rec'd
List ABCDE

025

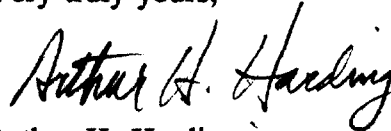
Mr. William F. Caton
March 24, 1995
Page 2

Presentations on March 23, 1995:

1. Dick Smith, Chief, Office of Engineering & Technology.
2. Lisa Smith, Legal Advisor to Commissioner Barrett.
3. Mary McManus, Legal Advisor to Commissioner Ness.
4. John Nakahata, Legal Advisor to the Chairman.
Mark Corbitt, Director, Technology Policy, Office of Plans and Policy.
5. Maureen O'Connell, Legal Advisor of Commissioner Quello.
Jill Lockett, Legal Advisor to Commissioner Chong.
6. Meredith Jones, Chief, Cable Services Bureau, and others on her staff.

Attached are a letter which summarizes the issues addressed as well as materials discussed with Commission personnel in the course of these presentations. A copy of this ex parte notice was filed with the Commission and delivered to all of the above-named Commission personnel on March 24, 1995.

Very truly yours,



Arthur H. Harding
Counsel for Time Warner Inc.

AHH:ka

MAR 24 1995

Carol A. Melton
Vice President-Law
and Public Policy

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

March 24, 1995

Meredith J. Jones, Esq.
Chief, Cable Services Bureau
Federal Communications Commission
2033 M Street, N.W., Room 916
Washington, D.C. 20554

Dear Ms. Jones:

I am writing in response to your letter of March 16, 1995, in which you seek an explanation of Time Warner's plans and objectives in deploying cable system upgrades which introduce addressability. As explained more fully below, Time Warner has recently announced certain changes in its plans which we believe demonstrate Time Warner's sensitivity to the needs and desires of both consumers and public officials. Time Warner will now provide the new home terminal only to those subscribers who choose to have it installed. Customers who wish to maintain their current service may do so. This means that the regulated levels of our service -- namely Basic and Cable Programming Service ("CPS") tiers -- will remain as they are.

During the past several months, Time Warner has embarked upon an ambitious plan to invest hundreds of millions in capital improvements to its cable system infrastructure. A key feature of these system upgrades is the installation of a state-of-the-art fiber optic trunk or backbone, which provides the platform for delivery of 80 or more analog video channels to every home. From a consumer standpoint, one immediate benefit from these system upgrades is a vast increase in programming channels available to the subscriber. In addition, customers should experience a noticeable improvement in picture quality; system reliability should improve; outages should be reduced; and service calls should be much less frequent.

At the core of the technology being deployed in Time Warner's system upgrades is addressability, which, through an advanced home terminal, allows channels to be controlled electronically so that individual channel selections can be "addressed" to each household.

Customers who choose to install the home terminal, for instance, will immediately have access to new channels being added to upgraded systems, and they can pick and choose among many of those channels on an *a la carte* basis. They also will have control over programming their children can watch using a parental control option and have access to an interactive, on-screen program guide using the universal remote control device. These new home terminals have also been designed to address many of the consumer electronics equipment compatibility goals of the 1992 Cable Act.

Time Warner continues to believe that addressability provides maximum choice to subscribers, allowing them to design customized programming packages tailored to their specific needs. Alternative cable television providers, such as telephone companies, direct broadcast satellite, wireless cable systems and other cable companies are or will be using a version of the home terminal. For example, Ameritech and Motorola have recently announced a test of Integrated Service Digital Network ("ISDN") technology in Champaign-Urbana, IL which would require consumers to purchase a home terminal for \$399. Thus, particularly in light of Time Warner's announcement to defer any further scrambling of CPS tiers, we urge the Commission to continue to permit scrambling of non-basic services and to maintain its preemption of any efforts to impose restrictions on a multichannel video provider's ability to scramble such services.

As the deployment of similar home terminals becomes more widespread by our competitors, such as telephone companies and DBS, Time Warner, like all multichannel video providers, needs to have the flexibility to account for evolving competitive, technological, security and marketing issues. Thus, we want to take this opportunity to explain more fully the many consumer benefits to be realized at such time as addressability becomes more widely available.

I. Time Warner's addressable home terminals provide numerous benefits to customers.

A. Addressability provides subscribers with more choice.

Time Warner remains convinced that addressability will eventually be embraced by consumers, once they fully understand its many beneficial aspects. Deployment of addressable home terminals is necessary to provide customers with the full benefits of the "New Product Tier" and "cloning" concepts endorsed by the Commission in its "going forward" proceeding. Moreover, addressability offers customers a greater ability to customize their channel line-up to receive (and pay for) only those services they truly want.

In each of the system upgrades activated recently, Time Warner has introduced an optional "New Product Tier" ("NPT"). In each case, the NPT is being affirmatively marketed to customers. The NPTs are providing consumers access to many new cable programming services. For example, listed below are the numbers of new programming services being offered on recently introduced NPTs. Also indicated are the penetration rates which reflect a remarkably high customer acceptance level, particularly since many of these new programming services do not have an established "brand name" identity:

<u>System</u>	<u>NPT Channels</u>	<u>Penetration</u>
Akron, OH	15	74%
Elmira, NY	7	20%
Eau Claire, WI	5	49%

Although not required to do so to satisfy the Commission's NPT requirements, Time Warner is offering each channel contained in the NPT on an a la carte basis as well as in the NPT package. Time Warner's marketing research and focus groups have overwhelmingly demonstrated that customers want the flexibility to pick and choose among various programming offerings so they can customize their own service packages. This is possible only through addressability. Prior to these system upgrades, Time Warner, like most cable operators, offered fixed packages: Basic (primarily local broadcast signals), Standard (primarily satellite-delivered cable networks) and Premium (HBO, Showtime, etc.). In essence, a customer's choices were "small," "medium," or "large." With addressability, however, customers do not have to settle for "off-the-rack" service -- they can custom-tailor a package of service to meet more precisely their viewing needs -- and their budget.

In its "going forward" proceeding, the Commission developed the highly innovative concept of channel "cloning." To be eligible to offer unregulated NPTs, cable operators must not migrate existing services from a regulated CPS tier to a NPT. However, CPS tier channels can be "cloned," i.e., they can be offered simultaneously on both the CPS tier and the NPT. To successfully offer cloning from both a technological and marketing standpoint, it is necessary to scramble the CPS tier in order to achieve addressability.

If the scrambling of CPS tiers is not permitted, cloning will no longer be possible. In the future, as more programming suppliers become comfortable with the cloning concept, Time Warner hopes to provide customers with the ability to select additional channels from any available service tier so that customers can design their own packages to meet their personal preferences.

Meredith J. Jones, Esq.

March 24, 1995

Page 4

B. Time Warner's addressable home terminal offers many desirable features to customers.

Time Warner has made every effort to select state-of-the-art home terminals that are rich in user-friendly features, such as:

- **On-screen Interactive Programming Guide.** A popular feature, the programming guide, is an on-screen menu that allows subscribers to choose upcoming programs in a particular category, such as children's shows or movies. Once a category is chosen, the on-screen guide lists programs in that subject area that will be presented over the next few hours. Unlike some programming guide services, Time Warner does not charge for its programming guide (StarSight, for example, charges customers an annual fee of \$46.99 for its menu service).
- **Parental Control.** A feature of the home terminal that has been wholeheartedly accepted by parents is the channel lockout. Parents may lock out individual or groups of channels through this feature. Moreover, the terminal allows parents, with the touch of a few buttons, to unlock any protected channel.
- **Program Timer.** This feature allows subscribers to tape programs at their convenience. Subscribers may record consecutively on two different channels, whether scrambled or unscrambled, thus meeting one of the compatibility goals established by Congress in Section 624A of the 1992 Cable Act. In addition, subscribers may order Pay-Per-View programs in advance. This function is also compatible with the popular VCR Plus technology which makes programming a VCR to record programs as simple as changing a channel.
- **Sleep Timer.** This feature allows subscribers to set the television to turn off after a certain period of time or to set a timer for the television to turn back on.
- **Favorite and Last Channel Recall.** At the push of a button, subscribers may call up programmed channels or the channel that was last watched.
- **Universal Remote.** The universal remote control units offered with the advanced addressable home terminals being deployed by Time Warner are capable of controlling most televisions and VCRs on the market today.

Meredith J. Jones, Esq.

March 24, 1995

Page 5

In addition, the introduction of addressability provides consumers with numerous other benefits. For example, with addressability, customers can instantaneously change service levels through a simple phone call to Time Warner's customer service office. No longer will customers be required to pay for a service call to the home every time they want to add or delete services.

Moreover, addressability allows for truly impulse pay-per-view -- a customer may order a pay-per-view movie or event through the interactive capability of the remote control and home terminal. No longer will it be necessary to call in advance or miss the beginning of an event because phone lines are clogged.

Finally, addressability helps prevent theft of service. In the 1992 Cable Act, Congress recognized that theft of cable service is a growing problem, and that cable operators should be allowed to deploy any available security measures to combat theft. Scrambling is by far the most effective way to reduce theft. Theft of cable service only serves to increase costs for law-abiding customers.

II. Time Warner is leading the industry in bringing state-of-the-art features to its customers and in implementing Congressional goals set forth in the 1992 Cable Act.

The 1992 Cable Act contains a "tier buy-through" provision designed to allow basic-only customers to purchase premium services such as HBO without having to purchase any CPS tiers offered by the cable operator. In order to meet the compliance deadline of the tier buy-through provision, it is necessary to deploy addressable converters.

The advanced home terminals being deployed by Time Warner also achieve numerous Congressional goals relating to consumer electronics equipment compatibility. For example, the program timer incorporated in the new addressable home terminals allows customers to sequentially record programs on different channels, whether scrambled or unscrambled. Moreover, the universal remote control units offered with the advanced addressable home terminals being deployed by Time Warner are capable of controlling most televisions and VCRs on the market today. Time Warner's comprehensive consumer education program, designed to make subscribers fully familiar with the numerous beneficial features of the home terminal, is also consistent with Congressional goals.

Meredith J. Jones, Esq.

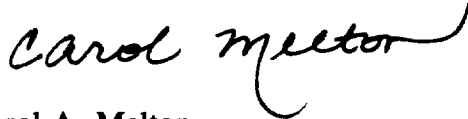
March 24, 1995

Page 6

We appreciate the opportunity to set forth Time Warner's views on this important issue and hope that by this letter we have better described the level of choice and array of services that Time Warner wants to make available to its customers.

Please let me know if you have any additional questions.

Sincerely,

A handwritten signature in cursive script that reads "Carol Melton". The signature is written in black ink and is positioned above the printed name.

Carol A. Melton

ADDRESSABLE HOME TERMINAL FEATURES

(SA 8600X & GI CFT2200)

- INTERACTIVE ON-SCREEN PROGRAM GUIDE**
- PARENTAL LOCK WITH PASSWORD SAFEGUARD**
- INSTANT ACCESS PAY-PER-VIEW OPTIONS**
- CUSTOM DESIGNED UNIVERSAL REMOTE CONTROL**
- VOLUME CONTROL**
- FAVORITE CHANNEL LISTING**
- SLEEP TIMER**

NOTE: THE CHANNELS IN RED ARE NEW CHANNELS

CLONING PROPOSAL

SPECIAL INTEREST TIERS					
EXISTING STD LINEUP	NEW STD LINEUP +ALC CHANNELS	KIDS/FAMILY PACKAGE	SPORTS PACKAGE	NEWS/ INFORMATION	SENIOR PACKAGE
FAMILY CHANNEL DISCOVERY LIFETIME A & E NICKELODEON CNN HEADLINE WEATHER CNBC WGN USA MTV VH-1 TNN ESPN WTBS TNT AMC HSE BET QVC E!	FAMILY CHANNEL DISCOVERY LIFETIME A & E NICKELODEON CNN HEADLINE WEATHER CNBC WGN USA MTV VH-1 TNN ESPN WTBS TNT AMC HSE BET QVC E! TLC CARTOON ESPN 2 NEWSPORT CMT COMEDY BRAVO TCM FLIX	FAMILY CHANNEL DISCOVERY <			

PROPOSED CHANNEL LINEUP

CHANNEL SERVICE	CHANNEL SERVICE	CHANNEL SERVICE
2 Local News Channel	31 WOR	61 Local Music
3 CBS	32 AMC	62 TBD
4 Local Weather Radar	33 Turner Classic Movies	63 Premium Flicks
5 NBC	34 Tonight's Movies	64 Encore
6 Local Origination 2	35 USA	65 HBO 1
7 Fox	36 Cartoon	66 HBO 2
8 HSN	37 Nickelodeon	67 HBO 3
9 Ind	38 Comedy	68 SHO 1
10 PBS	39 E!	69 SHO 2
11 Ind	40 Family Picks	70 MAX 1
12 Ind	41 Science Today	71 MAX 2
13 ABC	42 Family	72 TMC
14 QVC	43 Faith & Values	73 Disney
15 CSPAN 1	44 Discovery	74 PPV Ordering Hints
16 CSPAN 2	45 Lifetime	75 PPV Listings
17 Higher Education	46 A & E	76 Sneak Preview
18 Library/History	47 CNN	77 PPV 1
19 Public Schools/TLC	48 CNN Headline News	78 PPV 2
20 Public Access	49 America's Talking	79 PPV 3
21 Local Origination 1	50 CNBC	80 PPV 4
22 ValueVision	51 Court	81 PPV 5
23 ESPN	52 Local Headlines	82 PPV 6
24 ESPN 2	53 Stock-Ticker	83 PPV 7
25 Sports Service	54 Home & Garden	84 TBD
26 TNT	55 The Weather Channel	85 TBD
27 WTBS	56 VH-1	86 School Updates
28 WGN	57 TNN	87 Local Weather
29 Sports Scores	58 CMT	88 Customer Svc Chn
30 Sports Updates	59 BET	89 Stand Alone 1
	60 MTV	90 Stand Alone 2

BPT ☐ CPST ☐ NPT 1 ☐ NPT 2 ☐ Premium ☐ PPV ☐
 Virtual Channels ☐

PROPOSED VIRTUAL CHANNELS

SPORTS SCORES	– ON–GOING UPDATES OF SPORTS SCORES
SPORTS UPDATES	– LIVE INFORMATION UPDATES FROM SPORTING EVENTS
TONIGHT'S MOVIES	– LISTINGS OF THE MOVIES FOR THAT EVENING
FAMILY PICKS	– RECOMMENDED FAMILY VIEWING
SCIENCE TODAY	– LISTINGS OF SCIENCE/EDUCATION VIEWING, LISTINGS OF LOCAL SCIENCE EXHIBITS ETC.
LOCAL HEADLINES	– CURRENT LOCAL NEWS HEADLINES
STOCK–TICKER	– CURRENT STOCK PRICES
LOCAL MUSIC	– LISTING OF LOCAL CONCERTS, TICKET AVAILABILITY ETC.
PREMIUM FLICKS	– LISTING OF THAT EVENING'S PREMIUM MOVIES
PPV ORDERING HINTS	– DIRECTIONS ON HOW TO ORDER PPV MOVIES
PPV LISTINGS	– LISTINGS OF TONIGHT'S PPV SHOWINGS
SCHOOL UPDATES	– LISTINGS OF SCHOOL CLOSINGS, CURRENT SCHOOL EVENTS, MENUS ETC.
LOCAL WEATHER	– CURRENT LOCAL WEATHER
CUSTOMER SERVICE CHANNEL	– CURRENT UPDATES FROM CABLE COMPANY ON ISSUES CONCERN

ANALOG CHANNEL CAPACITY VS DIGITAL CHANNEL CAPACITY

